

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TABATABAEI, Mohammad)
A 75 312 124)
Plaintiff,)) NO. 08 C 1356
v.)) Judge Gettleman
Michael CHERTOFF, Secretary of U.S.)
Department of Homeland Security; Michael)
MUKASEY, U.S. Attorney General; Emilio T.)
GONZALEZ, Director, U.S. Citizenship &)
Immigration Services; Ruth DORCHOFF, District)
Director, U.S. Citizenship & Immigration Services,)
Chicago Field Office; F. Gerard, HEINAUER,)
Acting Director, Nebraska Service Center; and)
Robert S. MUELLER, III, Director of the Federal)
Bureau of Investigation,)
Defendants.)

AMENDED MOTION FOR JUDGMENT ON THE PLEADINGS

This action is under § 336(b) of the Immigration & Nationality Act (“INA”) and 8 U.S.C. § 1447 (b) for the Court to make a decision on Plaintiff’s Application for Naturalization (“Form N-400”) or remand the matter, with appropriate instructions, to the U.S. Citizenship and Immigration Services (“USCIS”) to determine the matter.

Defendants have not adjudicated Plaintiff’s Form N-400 in over two years. Accordingly, Plaintiff seeks entry of judgment on the pleadings ordering USCIS to adjudicate the application within 60 days and awarding Plaintiff reasonable attorney’s fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 for failure of Defendants to perform their duties within the statutory time period.

BACKGROUND

Plaintiff has been eligible for U.S. Citizenship after having resided permanently in the U.S. for at least five years. He filed Form N-400 with USCIS on July 24, 2006. With notice dated August 2, 2008 USCIS requested Plaintiff to have his fingerprints taken by an Application Support Center in St. Louis, Missouri on August 24, 2008. Plaintiff appeared for the scheduled fingerprinting.

Plaintiff inquired about the status of his application with USCIS on June 28, 2007. The agency informed him in a letter dated July 10, 2007 that the “case is not yet ready for a decision”. The application has remained pending without further action.

Plaintiff’s wife is presently in removal proceedings and will become eligible for relief from deportation once Plaintiff becomes a U.S. citizen. The Immigration Judge has agreed to continue her case for a limited period of time, pending a determination of Plaintiff’s application for naturalization so that time has become of an essence in this matter.

ARGUMENT

The Administrative Procedures Act (“APA”) provides jurisdiction over this matter, 5 U.S.C. §702, and allows a “reviewing court [to] compel agency action unlawfully withheld or unreasonably delayed...” 5 U.S.C. §706(1). Accordingly, the Court may order USCIS to adjudicate Plaintiff’s application within a reasonable time by entering judgment on the pleadings under Federal Rule of Civil Procedure 12(c).

Plaintiff’s contention is that the Defendant USCIS has unreasonably delayed adjudication of his application for naturalization. The pendency of name checks with the Federal Bureau of

Investigations (“FBI”) does not justify the unreasonable delay as 8 C.F.R. §335.2, which regulates the completion of background checks on applicants for naturalization, does not refer to an FBI name check and does not provide a valid basis for an unreasonable adjudications delay, U.S. District Court for Eastern District of Pennsylvania, Victor Mocanu v. Robert S. Mueller No. 07-0445 (February 8, 2008).

The delay in adjudicating Plaintiff’s application can also not be justified in the name of national security because the delay in background checks results in aliens remaining in the U.S. for extended periods of time with unadjudicated applications. If those aliens were a threat to national security, the delays would arguably increase the danger to the Country. It should be noted that the Plaintiff has been a lawful permanent resident of the United States for more than five (5) years and he has posed no risk to the United States. Furthermore, the government has never alleged that the Plaintiff is a security risk.

It is undisputed that the application has not been adjudicated by the USCIS and there is no justification for the unreasonable delay in the adjudication.

WHEREFORE, the Petitioner, Mohammad Tabatabaei, respectfully requests that this court order USCIS to adjudicate his application for naturalization within 60 days.

Respectfully submitted,
MOHAMMAD TABATABAEI

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